

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

DEBORAH SUSAN KERREOS,

Charging Party,

v.

WEST CONTRA COSTA UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. SF-CE-2143-E

PERB Decision No. 1426

April 4, 2001

Appearance: Deborah Susan Kerreos, on her own behalf.

Before Amador, Baker and Whitehead, Members.

DECISION

AMADOR, Member: This case is before the Public Employment Relations Board (Board) on appeal by Deborah Susan Kerreos (Kerreos) to a dismissal (attached) by a Board agent of the unfair practice charge. The charge alleged that the West Contra Costa Unified School District violated section 3543.5 of the Educational Employment Relations Act (EERA)¹ in various ways, including the manner in which it handled grievances filed by Kerreos.

¹ EERA is codified at Government Code section 3540 et seq. Section 3543.5 states:

It shall be unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

After reviewing the entire record, the Board hereby adopts the dismissal letter as the decision of the Board itself.²

ORDER

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

²The Board notes that Kerreos offered new supporting evidence and new charge allegations for the first time on appeal. PERB Regulation 32635(b) provides that “Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.” (PERB regs. are codified at Cal. Code Regs, tit. 8, sec. 31001, et seq.) Kerreos has not offered good cause that would permit us to review the new evidence or new allegations, and accordingly we did not consider them.

The unfair practice charge in Case No. SF-CE-2143-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

Dismissal Letter

November 13, 2000

Mr. F. Anthony Edwards
Seibel, Finta & Edwards L.L.P.
1850 Mt. Diablo Blvd., Suite 650
Walnut Creek, California 94596

Re: Deborah Susan Kerreos v. West Contra Costa Unified School District
Unfair Practice Charge No. SF-CE-2143-E
DISMISSAL LETTER

Dear Mr. Edwards,

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 14, 2000. The Charging Party, Deborah Susan Kerreos, alleged that the West Contra Costa Unified School District violated the Educational Employment Relations Act¹ in an unspecified manner. My September 13, 2000 Warning Letter indicated the original charge was unclear as to how the District violated EERA. However, when I sent the Warning Letter I was unaware of the amended charge filed by Ms. Kerreos on August 11, 2000.² Therefore, the Second Warning Letter addressed the additional information provided in Ms. Kerreos' amended charge in which she asserts that the District violated EERA Section 3543.5 by failing to meet and negotiate in good faith with Charging Party or her exclusive representative in order to address grievances and complaints, and threatened reprisals against Charging Party for filing grievances.

I indicated to you in my attached letters dated September 13, 2000 and October 31, 2000, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to Thursday, November 9, 2000, the charge would be dismissed.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² As per the October 6, 2000 notice of clerical error, the documents filed on August 11, 2000 in PERB's San Francisco Regional Office were intended to amend this unfair practice charge and should not have been assigned a new case number. The amended charge and the response to that amended charge have now been merged with this unfair practice charge, SF-CE-2143-E.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my September 13, 2000 and October 31, 2000 letters.

Right to Appeal

Pursuant to PERB Regulations,³ you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered “filed” when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier’s receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered “filed” when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board’s address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be “served” upon all parties to the proceeding, and a “proof of service” must accompany each copy of a document served upon a

³ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies of the Regulations may be purchased from PERB’s Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By _____
Marie A. Nakamura
Board Agent

Attachment

cc: Marlene L. Sacks

MAN

Second Warning Letter

October 31, 2000

Mr. F. Anthony Edwards
Seibel, Finta & Edwards L.L.P.
1850 Mt. Diablo Blvd., Suite 650
Walnut Creek, California 94596

Re: Deborah Susan Kerreos v. West Contra Costa Unified School District
Unfair Practice Charge No. SF-CE-2143-E
SECOND WARNING LETTER

Dear Mr. Edwards:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 14, 2000. The Charging Party, Deborah Susan Kerreos, alleges that the West Contra Costa Unified School District violated the Educational Employment Relations Act¹ in an unspecified manner. My September 13, 2000 Warning Letter indicated the original charge was unclear as to how the District violated EERA. However, when I sent the Warning Letter I was unaware of the amended charge filed by Ms. Kerreos on August 11, 2000.² This Second Warning Letter addresses the additional information provided in Ms. Kerreos' amended charge in which she asserts that the District violated EERA Section 3543.5 by failing to meet and negotiate in good faith with Charging Party or her exclusive representative in order to address grievances and complaints, and threatened reprisals against Charging Party for filing grievances.

Facts

Deborah S. Kerreos was a second grade teachers with the West Contra Costa Unified School District at Marie A. Murphy Elementary School. She taught in the District from 1980 until her resignation in August 1999.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² As per the October 6, 2000 notice of clerical error, the documents filed on August 11, 2000 in PERB's San Francisco Regional office were intended to amend this unfair practice charge and should not have been assigned a new case number. The amended charge and the response to that amended charge have now been merged with this unfair practice charge, SF-CE-2143-E.

In April of 1998, Ms. Kerreos filed a grievance that was never addressed by the District. Ms. Kerreos asserts that in May of 2000 she learned that the District's inaction on her April 1998 grievance was an unfair practice.

On February 25, 1999, the District filed harassment charges against Ms. Kerreos based upon statements of unnamed employees of the District. On May 7, 2000, the District's attorney, Marlene Sacks, informed Ms. Kerreos that the harassment charges were withdrawn because the unnamed complainants would not follow the procedures of Article 16 of the collective bargaining agreement. Ms. Kerreos asserts that in May of 2000 she discovered that the District's harassment charge was an unfair practice.

In May 2000, Ms. Kerreos participated in a judicial arbitration hearing for her civil case against the District. During the hearing Terri Jackson, President of the United Teachers of Richmond (UTR), stated that she was encouraged by Mr. Henry Hopkins, Principal at Marie A. Murphy Elementary School, to file racial discrimination and harassment charges against Ms. Kerreos. Ms. Kerreos does not state when Mr. Hopkins encouraged Ms. Jackson to file discrimination and harassment charges. Ms. Kerreos asserts that it was in May of 2000 that she became aware of the District's involvement in this unfair practice. Also during the same hearing Linda Lester, Assistant Superintendent of Personnel, stated that she administratively transferred Ms. Kerreos in violation of Articles 9 and 18 of the collective bargaining agreement.

In May of 1999 Ms. Kerreos filed four grievances as an individual against the District. During the aforementioned hearing in May 2000, Ms. Lester stated that Ms. Sacks did not interview any witnesses who would have proved the validity of those four grievances.

In response to Ms. Kerreos' request for arbitration of the four grievances of May 1999, Ms. Sacks stated that the District would not proceed to arbitration without the involvement of the UTR. Because the UTR determined in May of 2000 that it would not proceed to arbitration, the District also refused to proceed to arbitration.

Discussion

Ms. Kerreos asserts that the District violated EERA section 3543.5 by failing to meet and negotiate in good faith with Charging Party or her exclusive representative in order to address her grievances and complaints, and that the District threatened reprisals against Charging Party. However, the amended charge fails to establish a prima facie violation of EERA.

Ms. Kerreos as the Charging Party bears the burden of demonstrating that this charge was filed within the requisite statute of limitations. EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging

party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.) Also, the Board has held that the six month period runs from the time the conduct is discovered, and not from the date of the discovery of the legal significance of that conduct. (Val Verde Teachers Association, CTA/NEA (Twyman) (1998) PERB Decision No. 1257.)

Ms. Kerreos fails to meet the burden of demonstrating that all of the allegations in this charge were filed within the requisite six-month statute of limitations. The actions of the District that Ms. Kerreos asserts violated ERRA occurred from April of 1998 through May of 2000. Although Ms. Kerreos states that in May of 2000 she discovered that the District's past actions constitute unfair labor practices, the six-month statute of limitations period started when she discovers the conduct of the District and not when Ms. Kerreos learned of the legal significance of the conduct. Therefore as to the April 1998 grievances not addressed by the District, Ms. Kerreos fails to demonstrate that the conduct of the District, here the inaction on the grievances, was discovered in May 2000. As for the February 1999 harassment charges filed by the District against Charging Party, because Ms. Kerreos knew of the underlying conduct, the filing of the charges, in February of 1999, she fails to demonstrate that the conduct of the District was discovered in May 2000.

As for the remaining three assertions of unfair practices by the District, Ms. Kerreos states that she was unaware of the conduct underlying the unfair practices until May of 2000. Therefore, Mr. Hopkins encouragement of the UTR to file racial discrimination and harassment charges, the administrative transfer of Ms. Kerreos and the District's refusal to take the May 1999 grievances to arbitration fall within the requisite six month statute of limitations.

Even where PERB has jurisdiction over Mr. Kerreos' unfair practice charge, she is without standing to pursue alleged violations of EERA section 3543.5(c), the school districts duty to meet and negotiate in good faith with an exclusive representative. Only the exclusive representative has standing to pursue such an unfair practice charge. (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667.) Therefore as an individual Ms. Kerreos is precluded from bringing such a charge.

In addition Ms. Kerreos asserts that the District threatened reprisals against her for filing grievances. The information provided in the amended charge does not establish any instances where the District threatened reprisals against Ms. Kerreos. First, as stated above the failure of the District to pursue Ms. Kerreos grievances of April 1998, are outside PERB's six-month statute of limitations. However, even if the actions were within the requisite statute of limitations, there is no reported reprisal by the district for the grievances. Second, as for the harassment charges filed by the District based upon the statements of unnamed employees, even if that action by the District falls within PERB's statute of limitations there is no indication that the District filed harassment charges in retaliation for grievances filed by Ms. Kerreos. Third, regarding Mr. Hopkins encouragement of the UTR to file racial discrimination and harassment charges against Ms. Kerreos, there is no indication that Mr. Hopkin's action was a reprisal against Ms. Kerreos for filing grievances. Fourth, regarding Ms. Lester's

statement that she transferred Ms. Kerreos in violation of the collective bargaining agreement, there is no indication that Ms. Lester's action was a reprisal against Ms. Kerreos for filing grievances. Finally, as for the District's refusal to take Ms. Kerreos' May 1999 grievances to arbitration, there is no indication that the District's decision was a reprisal against Ms. Kerreos for filing the grievances. The District stated that it would not take Ms. Kerreos' grievances to arbitration without the UTR.

If by "threatening reprisals," Ms. Kerreos is asserting that the District interfered with her protected rights, she also fails to demonstrate such a prima facie violation. The test for whether a respondent has interfered with the rights of employees under the EERA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The Board described the standard as follows:

[I]n order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under EERA. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S, citing Carlsbad Unified School District (1979) PERB Decision No. 89; Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106.)

Here Ms. Kerreos fails to demonstrate any connection between the District's conduct and any harm to her employee rights under EERA section 3543³. In her amended charge Ms. Kerreos concludes that the District committed unfair practices, but she does not state how the actions of the District tends to or does result in some harm to employee rights granted under EERA.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the

³ Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer.

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respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before Thursday, November 9, 2000, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Marie A. Nakamura
Board Agent

MAN

September 13, 2000

F. Anthony Edwards
Seibel, Finta & Edwards, L.L.P.
1850 Mt. Diablo Blvd., Suite 650
Walnut Creek, California 94596

Re: Deborah Susan Kerreos v. West Contra Costa Unified School District
Unfair Practice Charge No. SF-CE-2143-E
WARNING LETTER

Dear Mr. Edwards,

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 14, 2000. The Deborah Susan Kerreos alleges that the West Contra Costa Unified School District (District) violated the Educational Employment Relations Act (EERA)¹. However, due to a lack of specificity in the charge it is unclear how the District violated EERA.

Facts

The charge states that the District, and Henry Hopkins, principal at Murphy Elementary, conspired with the United Teachers of Richmond (UTR) in order to ignore Ms. Kerreos' contractual rights regarding four grievances brought to the attention of the UTR in July of 1999. Also, the charge states that Marlene Sacks, attorney for the District, conducted an investigation regarding Ms. Kerreos employment with the District and only interviewed staff members known to be hostile toward Ms. Kerreos. In addition the charge asserts that the District intentionally ignored and or denied complaints filed by Ms. Kerreos. Also, the charge mentions that the Charging Party is involved in a lawsuit against the District.

Due to insufficient specificity of the charge, on August 23, 2000, I sent to you a letter requesting an amended charge. The letter chronicled my telephone conversations with you and Ms. Kerreos in July of 2000 explaining the need to amend this charge. In the letter I stated that the original charge did not "include the requisite precise and detailed statement of the conduct that she asserts constitutes an unfair practice." In that letter I explained that in order to proceed with my investigation I need to receive the original amended charge, and the original proof of

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

service showing that a copy of the amended charge was served on the Respondent by September 1, 2000. In response to the letter you left me a voice mail on August 25, 2000 explaining that you were in New York and unable to meet the September 1, deadline. Therefore on August 28th I spoke with your Assistant, Nedda Bass, and extended the deadline until September 11, 2000.

On September 11, 2000, I received a fax from your office. The fax however lacks the factual specificity required for me to proceed with my investigation. It combines Ms. Kerreos' charge with that of Mary Hughes-Tutass, a Charging Party, in two related charges and refers to both parties as "Claimants" without making any factual distinctions among the charges or between the parties. In addition the fax refers to "Respondents" without differentiating between the District and the UTR. Although the fax does assert that "Respondents" violate Government Code section 3543.3, 3543.5 and 3543.6, it lacks the specificity required to determine how the actions of the "Respondents" violated these sections of the Government Code.

Discussion

Ms. Kerreos' charge against the District did not state the section of the Government Code alleged to be violated nor did it contain a clear and concise statement of the facts and conduct alleged to constitute an unfair practice as required by the Regulations of the Public Employment Relations Board section 32615 and thus fails to state a prima facie violation within PERB's jurisdiction. The fax received from your office on September 11, 2000 did not cure these defects. Failure to provide a clear and concise statement of the facts as required by 32615(a)(5), limits my ability to find a prima facie violation within the jurisdiction of PERB. PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before September 22, 2000, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

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Sincerely,

Marie A. Nakamura
Board Agent

MAN